IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 1609 of 1998

Between:

M/s. Bommidala Brothers Limited , Managalagiri Road, Guntur , Represented by its Director, Guntur, Guntur District

..... PETITIONER

AND

1 Janga Venkateswara Rao, S/o. Veeraiah,
Sivaramanagar, Guntur,
Guntur District.
2 The Labour Court,
Guntur

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, particularly one in the nature of Writ of Certiorari calling for the records pertaining to Award dated 4-4-1997 passed in I.D.No.12/1990 and M.P.No. 5/90 on the file of Labour Court, Guntur (2nd Respondent) and published in G.O. Rt. No. 1874, Labour, Employment, Training & Factories (Lab.I) Department, dated 30-6-1997 and quashing the same as illegal and arbitrary.

Counsel for the Petitioner: MR.CH.RAMESH BABU

Counsel for the Respondent No.1: MR.G.VIDYASAGAR

Counsel for the Respondent No.2: G.P. FOR LABOUR

The Court made the following :

ORDER:

This writ petition is filed by the management of M/s.Bommidala Brothers Limited, Mangalagiri road, Guntur, represented by its Director, being aggrieved by the common award passed in I.D.No.12 of 1990 and M.P.No.5 of 1990 dated 04-04-1997 on the file of the Labour Court at Guntur.

2. The first respondent-workman laid a claim under Section 2-A (2) of the Industrial Disputes Act before the second respondent-Labour Court, Guntur, praying to direct the petitioner-management to reinstate him into service with continuity of service, all other attendant benefits, back-wages etc. The claim of the first respondent-workman was that he joined the services of the petitioner, tobacco company, on 04-01-1980 and since then performed his duties as a Clerk, Assistant Buyer, Cashier, Loading-Unloading Clerk, Weighing Clerk, Machine Hall Clerk, and supervision of work by Mutta coolies. For a long time, he worked in the petitioner's office in Mangalagiri road and about 1½ years ago he was deputed to work in the petitioner's branch by the side of Vijayalakshmi Talkies, Srinivasaraothota, Guntur, where he worked until he was illegally removed from service on 29-12-1989. He also further made allegations that the petitioner-management did not provide P.F. facilities to its workers in its unit in Srinivasaraothota and it is being run by the petitioner-management in a benami name as B.N.R. Enterprises. The Regional Provident Fund Commissioner visited that unit in May, 1989, noted down the particulars of all

the workers and directed the petitioner-management to enroll the workers as members under P.F. scheme. The petitioner-management laboured under an impression that the workman and another clerk by name Sreenivasa Rao were responsible for the visit of the Commissioner. Therefore, the petitioner-management bore a grudge and did not pay wages for some time and also terminated the services of the first respondent-workman without complying the provisions of the Section 25-F of the Industrial Disputes Act and the same is arbitrary and illegal.

3. A detailed counter-affidavit has been filed by the petitioner-management before the Labour Court denying the allegations made by the first respondent-workman and stating that there was no employer and employee relationship between the petitioner-management and first respondent-workman and the petitioner was the employee of the petitioner company as early as 31-12-1982 and thereafter the workman never worked with the petitioner company and he seems to have been working with one B.N.R. Enterprises with effect from 01-01-1983. Therefore, the petition is liable to be dismissed.

4. Before the Labour Court, on behalf of the first respondent-workman W.W.1 and W.W.2 were examined. On behalf of the petitioner-management, respondent therein, M.W.1 to M.W.5 were examined and no documents were marked. However, the Court marked Exs.X1 to X5, challans depositing P.F. in S.B.I. After elaborate consideration of both oral and documentary evidence, the Labour Court came to the conclusion that there was relationship of employer and employee and the workman has been working all along with the petitioner company and directed the petitioner company to reinstate the petitioner with continuity of service and back-wages. Insofar as prayer in M.P. is concerned, Labour Court directed the petitioner-management to pay Rs.2,347/- towards his salary from 01-10-1989 to 29-12-1989 and the rest of the claim of the petitioner was disallowed. Aggrieved by the same present writ petition is filed.

5. I am of the considered opinion that the labour Court has taken pains to discuss each and every aspect of the evidence and has rightly come to the conclusion that there was an employer and employee relationship between the petitioner company and the first respondent-workman. In this regard, the labour Court discussed the evidence of W.W.2-the Labour Welfare Officer, who worked in the petitioner company from 1973 to 1991. His evidence is that the petitioner company is doing business in the name of Hindustan Tobacco Company, Tobacco Enterprises of

India, Bommidala Purnaiah, B.N.R. Enterprises and also in the fictitious names of staff members. The petitioner company is doing business by taking licences in the names of some staff members working in the company. The workman joined in service of the petitioner company in the year 1980 as a clerk. He was also entrusted with other duties and that he worked up to 1989. The petitioner company removed the workman from services. In the beginning of service the first respondent-workman worked in Mangalagiri company for about six to seven years. He was residing in the company business premises in the company quarters at Mangalagiri. He was visiting Mangalagiri Branch twice or thrice in a month. Hence, he knows the workman personally. At the end of his services, the workman was brought to B.N.R. Enterprises of Guntur in Srinivasaraothota. The petitioner-management removed the first respondent-workman from service since the petitioner-management suspected that the workman gave information to Provident Fund squad about non-implementation of Provident Fund to the workers working in the B.N.R. company at Guntur. He used to visit B.N.R. Enterprises also during his service. The Head Office of the petitioner company was at Mangalagiri Road at Guntur. In the cross-examination nothing was elicited contrary to what he had stated.

6. The following findings of the Labour Court at paragraph 16 of its award would categorically show that the respondent No.1-workman all through worked with the petitioner company right from 04-01-1980 till his illegal termination i.e., on 29-12-1989.

> "16. The specific case of the petitioner is that he worked as a clerk in the respondent company continuously from 04-01-1980 to 29-12-1989 without any break of service. The management admits about the petitioner working in their company as clerk from 04-01-1989 to December, 1982 and thereafter the petitioner abandoned the service by himself voluntarily. To prove the case of the petitioner he got himself examined as W.W.1 and further examined the Labour Welfare Officer who worked in the respondent-management as W.W.2. Their categorical evidence is that the petitioner worked continuously in the respondent-management up to the end of 1989 commencing from 04-01-1980. None of the Directors of the respondent-management up to the end of 1989 commencing from 04-01-1989, none of the Directors of the respondent-management nor any responsible officer of the respondent-management is examined to disprove the contention and evidence adduced by the petitioner herein about his working in the respondent-management from 04-01-1989 to 29-12-1989. Besides the oral testimony of W.W.1 there is voluminous, cogent and convincing documentary evidence placed by the petitioner to establish the fact of his continuous service in the respondent-management. The management wrote a letter dated 17-09-1984 to the claimant when the claimant was

at Vijjapur. In this letter the management clearly stated that they are enclosing the D.D. for Rs.1,000/- in favour of the petitioner payable on Bank of Baroda, Vijjapur towards the expenses of the petitioner. This letter is signed for Bommidala Brothers Ltd., Ex.W1 letter was sent by the management to the petitioner herein in response to the telex message Ex.W2 given by the petitioner to the management from Vijjapur in Gujarat State. Ex.W3 is the telegram dated 29-09-1984 given by the management to the petitioner when the petitioner was in Gujarat in connection with the business of the respondent. Similarly Ex.W4 is the telegram dated 06-10-1984 which was also issued by the management to the petitioner when the petitioner was in Gujarat State. The petitioner herein addressed an Inland letter Ex.W5 to his son from West Godavari District to his residential address which is shown as care of M/s.Bommidala Brothers Ltd., Yerrabalem Road, Mangalagiri. It is clearly proved that the petitioner was residing in the quarters of the respondent even in the year 1984. Exs.W6 to W8 are the printed receipts of the year 1985 which were given by the respondent to the petitioner. Ex.W9 is the postal acknowledgment received by the petitioner from A.P. Service Commission Office to his care of M/s.Bommidala Brothers Yeerrabalem Road, Mangalagiri and this was in the month of January, 1985. Similarly Exs.W10 to W19 are the printed receipts given by the respondent company to the petitioner herein during the year 1986 to 1989. Exs.W20 and W.21 are the letters dated 27-08-1990 and 28-08-1990 sent to the petitioner by Regional Provident Fund Commissioner. According to these letters that the respondent deposited with P.F.No.AP/2975, the contribution of the petitioner for the period from 01-06-1980 to December 1982 and also for the period from 1/83 to 9/89. Exs.W22 to W24 are the lorry hire receipts of the respondent company in the handwriting of the petitioner herein written in the year 1989. Exs.W25 is the dispatch note dated 09-03-1989 written by the claimant on the respondent company printed stationery receipt. Lastly the petitioner sent notice by registered post to the respondent questioning his illegal termination and also mentioning the amount for which he is entitled. This notice is dated 16-12-1989. Ex.W27 is the acknowledgment for Ex.26. So all the above documents clearly established the fact that the petitioner is in continuously in service of the respondent company till the month of December, 1989."

Above finding of the Labour Court is based on the evidence placed before it.

7. The learned counsel for the petitioner-management could not bring to the notice of the Court that the evidence adduced by the management was not properly considered and in fact the Labour Court has considered each and every aspect of the evidence meticulously and came to the conclusion that there was employer and employee relationship and the first respondent-workman worked all through with the petitioner company. Insofar as illegal termination on 29-12-1989 without following the procedure as contemplated under Section 25-F of the Industrial disputes Act is

concerned, the said finding is not attacked by the learned counsel for the petitioner-management. Hence, I am of the considered opinion that the Labour Court has not committed any error or infirmity calling interference of this Court under Article 226 of the Constitution of India. The Writ Petition is devoid of merit and is liable to be dismissed.

8. Accordingly, the writ petition is dismissed. No order as to costs.

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C.V.RAMULU, J.

Dated 15-06-2005.

SKMR

..... REGISTRAR

To

1 The Labour Court,
Guntur.

2 CD copies